

BEFORE THE ARBITRATOR

In the Matter of the Petition of  
AFSCME LOCAL 734  
To Initiate Arbitration Between Said Petitioner and  
CITY OF MENOMONIE

Case 100  
No. 67673 INT/ARB-11099  
Decision No. 32631-A

Appearances:

Mr. Steve Hartman, AFSCME Council 40 Staff Representative, on behalf of the Union.  
Weld, Riley, Prens & Ricci, S.C., by Mr. Stephen L. Weld, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “City,” selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, herein “MERA.” A hearing was held in Menomonie, Wisconsin, on April 1, 2009. The hearing was transcribed and the parties subsequently filed briefs and reply briefs which were received by June 25, 2009.

Based upon the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a bargaining unit composed of employees in the Departments of Public Works, Parks, Water, Wastewater and Landfill employed by the City.

The parties engaged in negotiations for a successor collective bargaining agreement, herein “agreement,” to the prior contract which expired on December 31, 2007, and the Union filed an interest arbitration petition with the Wisconsin Employment Relations Commission,

herein "WERC," on January 2, 2008. The WERC appointed Susan J. M. Bauman to serve as an investigator and to conduct an investigation pursuant to Section 111.70(4)(cm)6 of MERA and the investigation was closed. The WERC on January 27, 2009, issued an Order appointing the undersigned to hear this matter.

### FINAL OFFERS

The parties' Final Offers are as follows:

1. **THE UNION'S FINAL OFFER**

The terms and conditions of the 2006-2007 Agreement shall become the terms and conditions of the 2008-2009 Agreement, except as stated in the tentative agreements, and proposed for modification herein:

1. All TAs contained in the City's 11/14/08 offer
2. Wages: 2% 1/1/08, 1% 7/1/08, 2% 1/1/09 and 1% 7/1/09.

2. **THE CITY'S FINAL OFFER**

All items shall remain as in the 2006-2007 collective bargaining agreement except as set out in the Stipulation of Tentative Agreements dated November 14, 2008, as follows:

1. **ARTICLE 11 – GENERAL PROVISIONS, Section 11.08 Uniforms –**  
Revise as follows:

The CITY shall furnish uniforms plus a clothing allowance of \$125.00 ~~\$100.00~~ per year and equipment required by the employer and replacement of uniforms and equipment shall be made upon turn-in. The clothing allowance shall be paid in January of each ~~the first full pay period of the~~ calendar year. The City shall also replace any items damaged in the line of duty.

2. **APPENDIX A –** Revise as follows:

2% wage increase effective January 1, 2008;  
2% wage increase effective January 1, 2009; and

Effective on ratification, combine employees in the classifications Park Caretaker and Laborer, relabeling it Laborer with a base rate at \$18.70 (Park Caretaker rate).

### POSITIONS OF THE PARTIES

The Union states that its wage offer should be selected because the City can afford to pay it; because its proposed external comparables support it; and because internal comparables should not be controlling. The Union adds that the City's rank and file police and fire units have settled for more than what the City is offering here; that except for two occasions, there has not been a pattern of uniform settlements between the City and its various unions in recent years; and that the CPI supports its wage proposal. It also argues that the City's proposal to combine the Parks Caretaker/Laborer positions into a new Laborer position should be rejected because there is no need to change the status quo and because the City has not adequately explained how its proposed new position would operate. The Union also states that while it is in favor of adding \$25 to the clothing allowance as proposed by the City, "it is not worth the 1% discount in the general increase proposed by the employer."

The City maintains that its proposed internal and external comparables should be adopted, and that its wage offer "maintains internal consistency" because it has been accepted by other bargaining units. It also contends that the current wage structure "is the result of years of voluntary bargaining" and should not be changed via an interest-arbitration proceeding, and that economic changes during the pendency of this matter favor its offer. The City also argues that its offer "contains two economic benefits that will be denied to employees" under the Union's offer - i.e. an additional \$25 for the clothing allowance and a 16¢ an hour raise for the new Laborer position, and that "working out the details of the pay increase and title change [for the proposed new Laborer position] should be relatively easy."

## DISCUSSION

Wages are the major issue. The City offers 2% on January 1, 2008 and another 2% on January 1, 2009. The Union seeks 2% on January 1, 2008; 1% on July 1, 2008; 2% on January 1, 2009; and 1% on July 1, 2009.

The City's offer represents a 4% wage lift while the Union's offer represents a 6% lift over the term of the agreement.

The total package costs under the City's offer are 2.37% for 2008 and 2.12% for 2009 (Revised City Exhibit 5). The total package costs under the Union's offer are 2.77% for 2008 and 2.91% for 2009 (Revised City Exhibit 6).

The City's wage offer has been accepted by the City's rank and file police and fire units which are represented by different unions, as well as the City's two supervisory police and fire units. The City also has granted the identical wage increases to its unrepresented employees. The City Hall unit, which is represented by the Union, has not settled its contract.

As for the statutory criteria listed in Section 111.70(4)(cm)7, Wis. Stats., I find that there is no dispute over "the lawful authority of the municipal employer"; or the "Stipulation of the parties"; or the applicability of private sector wages, hours and conditions of employment. I further find that "The interests and welfare of the public . . ." are served by selecting either Final Offer. The question of whether the City can meet the costs of the Union's wage offer is addressed below.

Since these parties never have proceeded to interest-arbitration, it is necessary to determine the internal and external comparables.

The Union asserts that the internal comparables should not be controlling because the rank and file police and fire units should not be compared to non-protective bargaining units and

because the two police and firefighting supervisor units cannot proceed to interest-arbitration. It also asserts that wage increase granted to non-represented employees should not be considered.

The City argues that the supervisory units engage in “meet and confer” sessions which enable them to “effectively present information and arguments supporting their demands and objecting/countering City proposals.”

While that may be so, they nevertheless cannot proceed to interest-arbitration which means that they, in the end, lack a meaningful mechanism to resolve any deadlocks reached with the City. They therefore are unable to obtain what the City absolutely does not want to give them, which is why they cannot be compared to other bargaining units which have that capacity.<sup>1</sup>

I therefore conclude that the internal comparables should only consist of the rank and file police and fire units.<sup>2</sup>

As for the external comparables, both parties have agreed to the City of Chippewa Falls, Dunn County, the City of Eau Claire, and the City of Rice Lake.

The Union wants to add as primary comparables the City of Hudson, the City of New Richmond and the City of River Falls. It also proposes as secondary comparables the City of Platteville, the City of Stevens Point and the City of Whitewater. The Union asserts that these three latter “college towns” should be used as external comparables because, like them, the City’s “economy rises, falls, and is dominated by the state university” - i.e. the University of Wisconsin-Stout which is located within the City and which has about 1,260 employees.

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<sup>1</sup> The same is true for the City’s unrepresented employees, which is why they also do not constitute an appropriate internal comparable.

<sup>2</sup> The City Hall unit, which otherwise is a valid internal comparable, cannot be used in this proceeding because its contract has not yet been settled.

The City points out that there are numerous private sector employers within the City which contribute to the City's tax base and overall economic prosperity - i.e. Wal-Mart with about 1,245 employees which is only about 15 fewer employees than the University of Wisconsin-Stout; Red Cedar Medical Center – Mayo Health System with about 654 employees; 3-M with about 635 employees; Con Agra Foods with about 341 employees; Ceva-Logistics with about 313 employees; and Philips Plastics Corporation with about 300 employees. Large public sector employers Dunn County and the School District of the Menomonie area also help support the City's economic base.

That being so, I find that the City's economy is not "dominated" by the University of Wisconsin-Stout.

Furthermore, arbitrators in interest-arbitration proceedings involving the City of Whitewater have refused to find that "college towns" constitute an appropriate comparable. See City of Whitewater (Law Enforcement), Decision No. 28710-A (Tyson, 1997); City of Whitewater (Professional Clerical), Decision No. 29537-A (Michelstetter, 11/99).

In addition, Platteville, Stevens Point and Whitewater are respectively located about 202, 148, and 238 miles from the City (Union Exhibit 8), thereby putting them too far away from the City's labor market. Given their distances from the City, I conclude that Platteville, Stevens Point and Whitewater do not constitute an appropriate set of comparables.

As for other proposed external comparables, Arbitrator James L. Stern addressed that issue in a prior arbitration proceeding between the City and the rank and file police unit by first pointing out that the issue before him centered on what wage increase should be granted during a contract's three-year duration.<sup>3</sup> He stated:

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<sup>3</sup> See City of Menomonie (Police Department), Decision No. 29898-A (2002), herein "Stern Award."

...

Therefore, in this instance, for the purpose of comparing increases in wage rates, but not in levels of wage rates the arbitrator expands the pool of comparables to include the counties of Dunn, Chippewa and Eau Claire and the cities of Hudson and River Falls.

It should be noted that the wage levels of county law enforcement officers in the three counties are considerably lower than the wage levels of city law enforcement officers in the major cities in those counties, reflecting a pattern under which county deputies in many Wisconsin counties receive less pay than their counterparts in the larger cities in the county. Also, as pointed out by the Employer in its brief, the cities of Hudson and River Falls are considered to be in the Minneapolis/St. Paul metropolitan area where wages run higher than in less heavily populated areas. therefore, (sic) this arbitrator believes that it would be improper to include these jurisdictions when comparing wage levels. However, these five jurisdictions have been added to the primary group of comparables only for the purpose of determining what has been the going wage increase in the area.

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The arbitrator notes that this is the first dispute in which the City of Menomonie has been involved in contract arbitration and wishes to stress that the comparables selected in this dispute involving a mid contract wage increase for law enforcement officers should not be viewed in any way as pattern setting. Neither party to this dispute saw fit to advance the detailed arguments usually put forward favoring one or another set of comparables. Also, as indicated above, insufficient data were available for the three comparables that both parties selected and which the arbitrator has designated as primary comparables. It is under those circumstances that the arbitrator selected the arbitrable pool.<sup>4</sup>

...

Arbitrator Stern thus made it clear that while he considered Hudson and River Falls as comparables for the limited purpose of determining what increase in wage rates was warranted, he did not consider them for determining the “levels of wage rates” because they “are considered to be in the Minneapolis/St. Paul metropolitan area where wages run higher than in less populated areas.” That is why he added: “this arbitrator believes that it would be improper to include these jurisdictions when comparing wage levels.”

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<sup>4</sup> Stern Award, pp. 2-3.

Since this dispute centers in part on what wage levels should be established, I agree with Arbitrator Stern that Hudson and River Falls should not be used as comparables for this purpose since they are in the Minneapolis/St. Paul metropolitan area.

The Union states that New Richmond should be a comparable because it is part of the “fast growing labor market” in nearby St. Croix County.<sup>5</sup> The City objects to having New Richmond as a comparable because its population is about half of the City’s population.

New Richmond is located about 47 miles from the City; it has a population of about 7,899; and its adjusted gross income is about \$46,956 (Union Exhibits 10A and E). It therefore is closer geographically to the City than Rice Lake which is 55 miles away; its population is only about 654 less than Rice Lake; and its adjusted gross income is about \$5,000 higher than Eau Claire which has the highest adjusted gross income among the agreed-upon external comparables.

Since the parties have agreed upon Rice Lake and Eau Claire as comparables, and since New Richmond falls close to those same parameters, I conclude that it is an appropriate comparable.

The City proposes as additional external comparables the City of Marshfield; the City of Merrill; the City of Onalaska; and the City of Wisconsin Rapids.

These cities respectively have populations of 19,346, 10,135, 16,425 and 18,500, thereby putting them close to the City’s population of 15,940 (City Exhibit 16).

As for adjusted gross income, Marshfield, Merrill, Onalaska and Wisconsin Rapids respectively have incomes of \$46,109, \$36,860, \$62,281 and \$36,135. But for Onalaska, they thus are close to the City’s adjusted income of \$37,382 (City Exhibit 17).

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<sup>5</sup> Arbitrator Stern did not address whether New Richmond constitutes an appropriate comparable.



As for geographic proximity, this record does not contain an exhibit showing how far these proposed comparables are from the City. Nevertheless, a look at a Wisconsin map shows that they are not in the same labor market with the City since Marshfield, Merrill, Onalaska and Wisconsin Rapids respectively are about 90-100, 120, 80 and 150 miles from the City.<sup>6</sup> The Union therefore points out that they are “at least three counties from being contiguous . . .” to Dunn County.

Given their geographic distances from the City which put them in different labor markets, I find that the external comparables should consist of localities which are geographically closer to the City and that none of the City’s proposed external comparables should be adopted.<sup>7</sup>

I therefore conclude that the external comparables should consist of Chippewa Falls, Eau Claire, Dunn County, New Richmond, and Rice Lake.

Having determined the appropriate internal and external comparables, it is now time to consider whether they support either party’s wage offer.

While acknowledging that the rank and file police and fire units are appropriate internal comparables, the Union argues that they are not as important as the external comparables because “there is no history of uniform settlements between public safety and DPW employees” and because they “have a history of receiving different wage increases.” It also argues that “numerous additional benefits” have been granted to the police and fire units; that “Aside from

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<sup>6</sup> These are very rough figures.

<sup>7</sup> The City argues that Onalaska is a comparable because its adjusted gross income is lower than Hudson which the Union has proposed as a comparable. Having determined that Hudson is not a comparable, there is no basis for finding that Onalaska is a comparable when its adjusted gross income is about \$20,283 higher than Eau Claire’s and when it is so far away from the City (City Exhibit 17; Union Exhibit 10E).

2005 there has not been a consistent pattern across all four units”; and that public safety employees generally “have had a consistent pattern different from the AFSCME settlements since 2001.”

The City counters that the bargaining unit employees here received higher wages than the police and fire units in 2007 in exchange for agreeing to change their health insurance contributions. It also argues that the benefit enhancements given to the police and fire units in 2007 should not “carry over” here because the expired 2006-2007 DPW agreement was signed after those two bargaining units signed their agreements, and because those units received a sick leave enhancement in 2007 to match what the employees here already had.

Different bargaining units over the years have received different across-the-board wage increases as shown by the following (Union Exhibit 11; Revised City Exhibit 10):

|             | <b>Police</b>      | <b>Fire</b>        | <b>City Hall</b>   | <b>DPW/Utilities</b> |
|-------------|--------------------|--------------------|--------------------|----------------------|
| <b>1996</b> | <b>4.9%</b>        | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>          |
| <b>1997</b> | <b>3.9% / 3.3%</b> | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>          |
| <b>1998</b> | <b>5.5%</b>        | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>          |
| <b>1999</b> | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>          |
| <b>2000</b> | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.7%</b>          |
| <b>2001</b> | <b>3.9%</b>        | <b>3.0%</b>        | <b>3.7% - 3.9%</b> | <b>4.8%</b>          |
| <b>2002</b> | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.6% - 3.8%</b> | <b>4.7%</b>          |
| <b>2003</b> | <b>3.0%</b>        | <b>3.0%</b>        | <b>3.6% - 3.8%</b> | <b>4.5%</b>          |
| <b>2004</b> | <b>1.5% / 1.5%</b> | <b>1.5% / 1.5%</b> | <b>2.0% / 1.0%</b> | <b>2.0% / 1.0%</b>   |
| <b>2005</b> | <b>2.0% / 1.0%</b> | <b>2.0% / 1.0%</b> | <b>2.0% / 1.0%</b> | <b>2.0% / 1.0%</b>   |
| <b>2006</b> | <b>1.5% / 1.5%</b> | <b>1.5% / 1.5%</b> | <b>2.0% / 1.0%</b> | <b>2.0% / 1.0%</b>   |
| <b>2007</b> | <b>2.0%</b>        | <b>2.0%</b>        | <b>1.5% / 1.5%</b> | <b>1.5% / 1.5%</b>   |

Some of these wage increases were tied to having employees pay higher health insurance contributions; having the City grant holiday pay and sick leave enhancements; and restructuring

wage schedules. But it is impossible on the basis of this record to determine exactly why all wage increases were granted and whether there were other tradeoffs involving those wage increases.

It is clear, though, that the police unit's contract for 2007-2009 has benefits not offered to the employees here – e.g. an increase from \$30 to \$45 for temporary supervisory duties; an increase from \$3 to \$5 in per diem pay; and an increase of about 14¢ an hour for “alert status” (Union Exhibit 12A). The fire unit's contract provides for greater longevity pay and raises the pay for alert status by about 5¢ and 15¢ (Union Exhibit 12B).<sup>8</sup>

The Union, however, signed the expired contract here after the police and fire units ratified their contracts which means that the Union had the opportunity to try to obtain similar benefits, thereby undercutting its claim that its members deserve higher wage increases because of what happened then.

The Union also claims that the police and fire units “achieved a substantially greater absolute monetary increase in their wage income at 2% than. . .” the employees here who in 2008 and 2009 will receive \$39,567.84 and \$40,359.20 under the City's offer.

The City counters that the Union's wage data does not include longevity pay or overtime pay, hence underreporting the amount of an employee's total, overall compensation. It therefore argues that when longevity pay is included, an employee's annual salary in 2008 amounted to \$42,335 and in 2009 amounts to \$43,210 (City Revised Exhibit 5).

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<sup>8</sup> The police and fire units also received enhanced sick leave enhancements which are similar to the ones already received by the Union's bargaining unit members, and they also received greater longevity pay, again to match what the bargaining unit employees here already receive.

This point is well taken because longevity pay is a form of compensation which must be considered in determining an employee's wages. That is why \$42,335 is the correct figure representing the average bargaining unit employee's annual wages in 2008 and why \$43,210 is the correct figure for 2009.

As for the external comparables, those employees have received the following percentage wage increases (City Exhibit 20; Union Revised Exhibit 14):

| EMPLOYER                                   | 2008                   |       | 2009            |
|--|------------------------|-------|-----------------|
| CHIPPEWA FALLS<br>Street/Waste/Water/Other | 1/1 2.00%              |       | 1/1 3.00%       |
|  | 7/1 1.00%              |       | 7/1             |
|  | 1/1 2.00%              |       | 1/1 3.00%       |
|  | 7/1 1.00%              |       | 7/1             |
| DUNN COUNTY                                | 3.00%                  |       | 2.50%           |
| EAU CLAIRE                                 | 7/1 2.00%              |       | 1/1 0.75%       |
|  |                        |       | 7/1 Not Settled |
| NEW RICHMOND                               | 1/1 3.00%              |       | 1/1 3.00%       |
| RICE LAKE<br>Streets                       | 1/1 1.50%              |       | 1/1 1.50%       |
|  | 7/1 1.50%              |       | 7/1 1.50%       |
|  | Water/Wastewater Util. | 3.10% | 2.50%           |

The City's proposed wage increases of 2% on January 1, 2008, and 2% on January 1, 2009, thus are less than the wage increases in Chippewa Falls, Dunn County, New Richmond, and Rice Lake. Eau Claire granted a 2% increase on July 1, 2008, but it has not yet settled on wages for July 1, 2009.

The Union's proposed wage increases of 2% and 1% on January 1, 2008, and July 1, 2009, and then 2% and 1% on January 1, 2009, and July 1, 2009, are supported by Chippewa Falls, Dunn County, New Richmond and Rice Lake.

The external comparables thus support the Union's percentage wage increases.

These increases must be considered alongside the level of hourly wages paid by the external comparables in order to determine whether the hourly wages paid here should better match up with the hourly wages paid there.<sup>9</sup>

Both parties' hourly wage offers for 2008-2009 are above the maximum Heavy Equipment Operator wage rates for Rice Lake, but below the maximum wage rates for Chippewa Falls, Dunn County, Eau Claire and New Richmond (Union Revised Exhibit 15; Revised City Exhibit 24).

Both parties' hourly wage offers for 2008-2009 are above the maximum Truck Driver/Public Works wage rates for Rice Lake (Union Revised Exhibit 16; City Exhibit 21). The City's 2008-2009 offer is below the rest of the comparables. The Union's offer is about equal to Chippewa Falls for both years and equal to Eau Claire for 2009, but below Dunn County and New Richmond for both years.

As for the Water Operators and Wastewater Operators, the City asserts that it is "more difficult" to compare them "because certification levels affect compensation," which is true. Nevertheless, some of the wage data reflects that fact and there is no reason not to use it this caveat in mind.

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<sup>9</sup> The Union states that the parties "are in dispute over the wage increase pattern" rather than wage levels or upgrade issues. While the wage increase pattern certainly is very important, so are the wage levels paid elsewhere since they, too, help determine whether the employees here are underpaid when compared to their counterparts elsewhere, which is something that cannot be done by merely looking at the percentage of wage increases granted elsewhere.

The parties' 2008-2009 wage offers for a Water Serviceman II Operator are ahead of Rice Lake and behind Chippewa Falls and Eau Claire (City Exhibit 23; Union Revised Exhibit 17).<sup>10</sup>

Both parties' wage offers for a Wastewater Operator for 2008-2009 are lower than the maximum wage rates in Chippewa Falls, Eau Claire, and Rice Lake (Union Revised Exhibit 18; City Exhibit 22).

The maximum wage rates among the external comparables therefore support the Union's offer.

The City points out, however, that the employees here immediately receive their maximum wage rates upon their hire. That contrasts sharply with the external comparables because Heavy Equipment Operators and DPW workers in Chippewa Falls, Dunn County, Eau Claire, and Rice Lake respectively must wait 6 months, 2 years, 4 years and 3 years before receiving their maximum pay (City Exhibit 21; City Revised Exhibit 24). Wastewater Operators in Chippewa Falls and Eau Claire respectively must wait 6 months and 4 years before getting maximum pay, while Rice Lake has no such wage schedule (City Exhibit 22). Water Operators in Chippewa Falls and Eau Claire respectively must wait 10 years and 4 years (City Exhibit 23).

The bargaining unit employees here therefore receive a highly significant wage benefit by not waiting so long to receive their maximum pay.

The data regarding external comparables therefore is mixed, with the recent wage increases and wage levels supporting the Union's offer, while the time it takes to receive maximum pay supports the City's wage offer.

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<sup>10</sup> Dunn County and New Richmond apparently do not have this classification or the Wastewater Operator classification.

The City maintains that its Final Offer also should be adopted because “Changes during the pendency of the arbitration proceedings . . .” reveal that “The economic conditions facing workers worldwide and Wisconsin municipalities have changed dramatically in the last nine months as partly shown by the fact that the CPI in November, 2008 dropped by 0.1% and in December 2008 to -0.9%. It also argues that both the Union’s offer and the City’s offer in 2008 exceeded the CPI for November – December 2008, and that the City has not filled three vacant positions because of declining state aides and the impact of levy limits. The City adds that arbitrators in several recent cases have cited the country’s very difficult economic situation in reaching their decisions.<sup>11</sup>

The Union disagrees and argues that there have not been any material changes during the pendency of this matter, and that the City’s reliance on the November – December 2008 CPI is misleading and fails to acknowledge that the employees here will lose 0.5% to inflation under the Union’s offer and lose about 1% under the City’s offer when the CPI is measured from January 1 to December 31, 2008. It also claims that the ills of the national economy have not caused any “economic collapse” for the City and that the City has not put in any evidence relating to local economic conditions.

One need not be a graduate of the London School of Economics to realize that America has experienced the worst economic crisis since the Great Depression and that nearly all employers - be they in the public or private sectors - have faced enormous economic and fiscal

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<sup>11</sup> See State of Illinois, Department of Central Management Services, Case No. S-MA-08-262, Arb. Ref. 08; 208 (Benn, 2009); Washington County (Sheriff’s Department), Decision No. 32421-A (Honeyman, 2009); Wausaukee School District, Decision No. 32479-A (Schiavoni, 2009).

challenges. That, though, does not automatically mean that the City has been adversely impacted as much as other public employers across the country who, in some cases, have faced crippling tax and revenue declines.

For as Arbitrator Fred Dichter has aptly stated:

*If an economic slowdown around the Country were the only consideration, that would apply, everywhere not just in the locality involved in the dispute. All communities would thus be justified in making a smaller wage or benefit proposal. That is not the key consideration, however. There must be more than a showing that nationally the economy is down. Instead, the key to determining whether this factor is applicable in a particular proceeding is to determine how this locality is faring when compared to other surrounding localities. Is its economy more depressed than others? If it is, this factor applies and this Arbitrator has so found in the past. On the other hand, if the economy in the locality involved is faring better than its comparable neighbors, than (sic) this factor cannot be used to justify an offer that would on balance be lower than what was given by its comparable neighbors. In reviewing the data from the exhibits offered by the parties, the Arbitrator does not find that this City has been economically disadvantages (sic) when compared to the economy of the comparable communities. (City of Oshkosh, Dec. No. 32148-A, (2008))*

Here, there is no specific evidence demonstrating how the economic crisis has hit the City.<sup>12</sup> Indeed, the City acknowledges that it is “not making an inability to pay argument.”

The record does show that the City has not filled three vacant positions because of economic belt-tightening caused by declining state aides and revenue limits.

Such belt-tightening standing alone, however, is insufficient to warrant finding that any state law or directive should be given “greatest weight” or that local economic conditions should be accorded “great weight,” as the totality of the record establishes that the City has the financial ability to meet the costs of the Union’s Final Offer.

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<sup>12</sup> The only specific evidence relating to the local economy are layoffs at a local company and possible rewriting of certain contracts by the University of Wisconsin-Stout. The extent of those layoffs are unknown and there is no proof that those contracts have in fact been rewriting, which is why this evidence has little weight.



In addition, the CPI supports the Union's wage offer because the total package costs under the City's offer amount to 2.37% for 2008 and 2.12% for 2009 which is less than the CPI for 2008 which averaged about 4.3% (City Exhibit 7). The total package costs under the Union's offer amount to 2.77% for 2008 and 2.91% for 2009, thereby bringing its offer closer to the CPI.

Turning now to the City's proposal to create a new Laborer position, the record shows that the Union in contract negotiations initially sought a 16 cents an hour wage increase for the current Laborer position to match the Park Caretaker position, and that the City responded by agreeing to a 16 cents an hour wage increase for its proposed new Laborer position which combines the former Laborer and Park Caretaker positions into one position.

The Union objects to the creation of the position on the grounds that the City has not proven the need for such a change; that the City has offered different explanations of how the new position would operate; and that the City's proposal is too vague and must be rejected under such cases as Frederic School District, Dec. No. 17486-A (Imes, 1980) and City of De Pere, Dec. No. 26250-A (Krinsky, 1990) where arbitrators have rejected proposed contract language.

The City states it makes "perfect sense" to combine these two positions because their job descriptions "are almost identical"; that the new position is needed because it would be more efficient; and that it will be "relatively easy" for the parties to work out the details of implementing its proposal. The City adds that combining these two positions will make it easier to assign overtime if they are in the same classification, thereby avoiding disputes over which employees should receive overtime. It also states that the Union's two cited cases are not on point because Frederick School District centered on the phrase "may be eligible" which

Arbitrator Sharon Imes found could enable the employer to unilaterally decide not to grant insurance benefits, and because City of DePere centered on language which was in conflict with the contract.

Neither of those situations exist here since the City's proposed language is clear on its face and since it does not conflict with any other language in the agreement. Furthermore, while the City has not provided the details of how its language will be implemented, the parties should be able to work them out. On the other hand, the Union correctly points out that the City has offered different explanations regarding what efficiencies would be achieved under its proposal. It therefore is questionable whether the City has met its burden of proving that this change is really needed.

The City's Final Offer also calls for increasing the clothing allowance by \$25 which the City claims it agreed to because it was led to believe that would lead to a settlement, and which the Union objects to because it is tied to the City's wage offer.<sup>13</sup>

Standing on its own merits, however, there is no basis for not awarding this additional benefit.

In review, and as related above, wages are the key issue here which is why the creation of the new proposed Laborer position and the additional \$25 clothing allowance have far less weight.

On the key issue of wages, the City's offer is supported by the internal comparables because both the police and fire units have agreed to the City's 2% wage increases on January 1,

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<sup>13</sup> The parties disagree over whether they reached a tentative agreement in mediation with the City claiming, and the Union denying, that such an agreement was reached. Since both parties have presented conflicting evidence regarding what happened in that mediation, it is impossible to determine exactly what, if anything, was then agreed to.

2008, and January 1, 2009. The CPI and the external comparables support the Union's offer because the external comparables who have settled contracts for 2008 and 2009 have agreed to similar wage increases which are close to the Union's proposed wage lift of 6% and because, with the exception of Rice Lake, the wage levels among the external comparables generally are higher than the wage levels here.

Internal settlements ordinarily must be given considerable, if not great weight, which is why a party seeking to break an internal wage pattern must establish the clear need to do so.

The internal comparables here cannot be given conclusive weight because the City's different bargaining units have not always received the identical wage increases. The wage increases and wage levels among the external comparables cannot be given conclusive weight because many of the employees there must wait years - in some cases 10 years - before receiving their maximum pay.

This case thus boils down to whether the internal comparables outweigh the external comparables.

Since the wage schedule here provides for maximum pay much earlier than the external wage schedules, it is highly favorable in this regard even though it is highly unfavorable regarding the top wage levels.

Given this mixed picture of where the employees here stand vis a vis their external comparables, I find that the overall wage schedule here does not warrant breaking the internal wage pattern. I therefore conclude that the City's Final Offer should be adopted.

In light of the above, I issue the following

AWARD

The City's Final Offer, along with all tentative agreements earlier reached, shall be incorporated into the parties' 2008-2009 collective bargaining agreement.

Dated at Madison, Wisconsin, this 24<sup>th</sup> day of August, 2009.

Amedeo Greco /s/  
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Amedeo Greco, Arbitrator